



## **MEMORANDUM**

To: State Board of Education  
From: Becky Bowman, Director of Special Education  
Date: July 5, 2013  
Re: Request for approval of proposed rule revisions

On April 3, 2013, the Board approved the initiation of rulemaking to revise 511 IAC 7-33 to align with new federal special education regulations regarding parental consent for the use of public funds or insurance (Medicaid) to pay for special education and related services. A copy of the proposed rule is attached. The Department requests the Board's approval of the proposed language.

# TITLE 511 INDIANA STATE BOARD OF EDUCATION

## **Proposed Rule** LSA Document #13-171

### DIGEST

Amends 511 IAC 7-33-4 to align the notice and consent requirements to access Medicaid or other public benefits to pay for special education and related services with the new federal requirements.

SECTION 1. 511 IAC 7-33-4 IS AMENDED TO READ AS FOLLOWS:

#### **511 IAC 7-33-4 Use of public and private insurance proceeds**

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-19-2; IC 20-35

Sec. 4. (a) A public agency may use Medicaid or other public benefits or insurance programs in which a student participates to provide or pay for services required under this article, as permitted under the public benefits or insurance program. With regard to services required to provide a free appropriate public education to a student with a disability under this article, the public agency **may not**:

(1) ~~may not~~:

~~(A)~~ require a parent to:

~~(iA)~~ sign up for or enroll in public benefits or insurance programs in order for the student to receive a free appropriate public education; or

~~(iiB)~~ incur an out-of-pocket expense, such as the payment of a deductible or copay amount incurred in filing a claim for services provided, but may pay the cost that the parent otherwise would be required to pay; or

~~(B2)~~ use a student's benefits under a public benefits or insurance program if that use would:

~~(iA)~~ decrease available lifetime coverage or any other insured benefit;

~~(iiB)~~ result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the student outside of the time the student is in school;

~~(iiiC)~~ increase premiums or lead to the discontinuation of benefits or insurance; or

~~(ivD)~~ risk loss of eligibility for home and community based waivers, based on aggregate health-related expenditures; ~~and~~

~~(2) must do the following:~~

~~(A) Obtain informed parental consent as defined by 511 IAC 7-32-17 each time that access to public benefits or insurance is sought, for the specific services, and duration of services identified in a student's IEP. If the:~~

~~(i) IEP is revised or extended to require additional services; or~~

~~(ii) public agency charges different amounts for such services;~~

~~the public agency must again obtain informed parental consent as defined in 511 IAC 7-32-17.~~

~~(B) Notify the parent that refusal to allow access to the public benefits or insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parent.~~

**(b) A public agency must provide written notice to the parent:**

**(1) before accessing the student's or the parent's public benefits or public insurance for the first time;**

**(2) prior to obtaining the one-time written parental consent as described in subsection (d); and**

**(3) annually thereafter.**

**(c) The written notice described in subsection (b) must:**

- (1) be provided in language that is understandable to the general public;**
- (2) be provided in the native language or other mode of communication used by the parent, unless it is clearly not feasible to do so; and**

**(3) include a statement that:**

**(A) The public agency must provide written notice and obtain written parental consent prior to accessing the student's or the parent's public benefits or public insurance for the first time.**

**(B) The parental consent form provided to the parent must specify:**

- (i) the personally identifiable information that the public agency may disclose;**
- (ii) the purpose of the disclosure;**
- (iii) the agency to which the disclosure may be made; and**
- (iv) the parent understands and agrees that the public agency may access the public benefits or public insurance to pay for services for the student.**

**(C) The public agency may not:**

- (i) require parents to sign up or enroll in public benefits or public insurance programs in order for the student to receive a free appropriate public education;**
- (ii) require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part; and**
- (iii) use a student's benefits under a public benefits or insurance program if that use would:**
  - (AA) decrease available lifetime coverage or any other insured benefit;**
  - (BB) result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the student outside of the time the student is in school;**
  - (CC) increase the premiums or lead to the discontinuation of benefits or insurance; or**
  - (DD) risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.**

**(D) The parent has the right, at any time, to withdraw his or her consent to disclose personally identifiable information to the agency responsible for the administration of the State's public benefits or public insurance program.**

**(E) The parent's refusal to consent or withdrawal of consent to disclose personally identifiable information to the agency responsible for the administration of the State's public benefits or public insurance program does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parent.**

**(d) The written consent form shall:**

- (1) describe the personally identifiable information that the public agency may disclose;**
- (2) specify the purpose of the disclosure;**
- (3) specify the agency to which the disclosure may be made; and**
- (4) include a statement that the parent understands and agrees that the public agency may access the public benefits or public insurance to pay for services for the student.**

**(e) The public agency shall obtain the parent's written consent prior to accessing the student's or the parent's public benefits or insurance for the first time.**

**(f) With regard to services required to provide a free appropriate public education to a student with a disability under this article, the public agency may access a parent's private insurance proceeds only if the parent provides informed consent as defined by 511 IAC 7-32-17. Each time the public agency proposes to access the parent's private insurance proceeds, it must do the following:**

- (1) Obtain informed parental consent as defined by 511 IAC 7-32-17.**

(2) Inform the parent that refusal to permit the public agency to access the private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parent.

(eg) If a public agency is unable to obtain informed parental consent to access the parent's private insurance, or public benefits or insurance when the parent would incur a cost for a specified service required under this article, the public agency may use its Part B federal funds to pay for the service in order to ensure a free appropriate public education is provided to the student. These funds may also be used to avoid financial cost to a parent who otherwise would consent to the use of private insurance or public benefits or insurance. If the parent would incur a cost, such as a deductible or copay amounts, the public agency may use its Part B funds to pay the cost.

(dh) Proceeds from public benefits or insurance or private insurance shall not be considered program income for purposes of 34 CFR 80.25 with respect to the administration of federal grants and cooperative agreements.

(ei) If a public agency spends reimbursements from federal funds, such as Medicaid, for services under this article, those funds shall not be considered state or local funds for purposes of maintenance of effort provisions.

(fj) Nothing in this article shall be construed to alter the requirements imposed on the state Medicaid agency, or any other agency administering a public benefits or insurance program by federal statute, regulations, or policy under Title XIX or Title XXI of the Social Security Act, or any other public benefits or insurance program.